COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 27 of 2002

Smt. Kamal Jindal
and four others. … **Appellants.**

Versus

Vinod Kumar
and 6 others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 29.11.2001 passed in M.A.C. Case No. 61 of 2000, Smt. Kamal Jindal and others Vs. Vinod Kumar and others, by Motor Accident Claims Tribunal/Additional District Judge, I F.T.C. Dehradun ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 5,20,000/- as compensation in favour of the claimant-appellants along with interest @ 9% per annum, as mentioned in the impugned order, under Section 166 of the Act. Aggrieved, the claimant-appellants have come up in appeal challenging the quantum of compensation, on the ground that the learned Tribunal has failed to appreciate the evidence regarding income of the deceased and the findings of the learned Tribunal are erroneous.

Brief facts, giving rise to the present appeal, are that on 10-3-2000 at 3 p.m., Vinod Kumar Jindal was going from Doiwala to Dehradun along with his business goods by motor vehicle (Vikram Tempo) No. U.P.-07 J 0091, which was meant for carriage of goods and driven by Opposite Party No. 5 Ganesh Rawat. When he reached near Kali Temple Harrawala, then another Vikram No. U.P. 07 H 5878, which was being driven by

Ashok Kumar O.P. N.2 rashly and negligently came from the opposite direction and hit the former vehicle, due to which said Vinod Kumara sustained grievous injuries and he was brought to Doon Hospital for treatment, where he was declared dead. According to the claimants, the driver of the offending vehicle escaped from the spot. The report of this accident was lodged by O.P. No. 5. The deceased has been stated to be businessman and was running a Provision Store in the name and style “Rahul Provision Store” Doiwala, thereby earning about Rs. 10,000/- per month and was paying income tax. The deceased was aged about 44 years at the time of accident. He was the only earning member of the family and he left behind the claimants as his deponents. Hence the claimants have filed claim petition for the amount of Rs. 31,60,000/- under Section 166 of the Act for compensation against the owner, driver and insurer (O.P. Nos. 1, 2 and 3) of the offending vehicle.

Opposite Party Nos. 1 and 2 (owner and driver of the offending vehicle), respondent nos. 1 and 2 filed joint written statement and denied the allegations of the petition. They have pleaded that the compensation claimed is highly excessive. It has been denied that on the alleged day and time, no accident took place due to rash and negligent driving by their driver O.P.No.2 hitting vehicle Vikram No. UP 07 J-0091. The injuries and consequent death of the deceased in the said accident has been denied. They have also denied that driver of the alleged offending vehicle managed to escape from the spot. It has also been pleaded that the offending vehicle was duly insured with the Oriental Insurance Company-respondent no.3. According to them, on the date and time as alleged, the O.P.No.2 was driving his vehicle and when it reached on the spot, its front tyre burst all of a sudden and the vehicle stopped. In the meantime, from the opposite direction vehicle UP 07 J-0091 driven rashly and negligently came and it hit the said vehicle with the result that vehicle overturned resulting into

grievous injuries to the deceased, therefore, the liability to pay compensation rests on the O.P.No.3, insurer of their vehicle and owner, driver and insurer of the loader Vikram UP 07-0091.

O.P.No.3 filed his written statement and denied the allegations of the claim petition. It has pleaded that the claimants have not disclosed the source of income of the deceased and no documents have been filed regarding income tax returns. It has also been stated that the Vikram Tempo UP 07-0091 was being driven in violation of the terms and conditions of the Insurance Policy and it was not authorised to carry passengers. Plea of collusion between claimants and O.P.Nos. 4 and 5 and that the claimants are bound to satisfy the Tribunal that the said Vikram driver O.P. No.5 was holding a valid driving licence. It has denied the vehicle insured with it was being driven rashly and negligently and has also pleaded that the answering O.P. is not liable to pay compensation.

O.P.Nos. 4 and 5 also filed their written statement and has denied all material allegations of the petition. According to them the accident in question was the result of rash and negligent driving by O.P.No.2 causing injuries to the deceased as well as driver of the said Vikram, Ganesh Rawat and that the O.P.No.2 ran away from the spot. The income of the deceased has been disputed. Plea of no cause of action against them was also taken. They have pleaded that their vehicle was duly insured with the O.P.No.7-respondent no.7 and that they have not violated the terms and conditions of the policy.

O.P. No.7 also contested the proceedings by filing its written statements. It has denied the allegations made in the petition and stated that proof of the age of deceased rests on the claimants. Business of the deceased as alleged has been denied thereby earnings Rs. 10,000/- per month. It has denied that the claimant

no.1 is the widow of the deceased aged 40 years and similar plea has been taken regarding other claimants. It was also pleaded that the compensation claimed is highly excessive and has disputed the amounts claimed under other heads. It has been lastly stated that the liability to pay compensation does not rest on it.

On the pleadings of the parties, the learned Tribunal framed as many as ***five issues*** in the case. The ***Issue No.1*** related to rash and negligent driving of the vehicle No. UP 07J-0091 resulting into motor accident. ***Issue No.2*** related to holding of valid driving licence with the driver of aforesaid vehicle. ***Issue No.3*** related to relief. Additional ***Issue No. 4*** was framed regarding the accident in question due to rash and negligent driving of vehicle no. UP 07 H-5878 by its driver and ***Issue No.5*** related to holding of valid driving licence with the driver of the said Vikram Tempo UP 07 H-5878.

After hearing both the parties and considering the evidence on record, the learned Tribunal took Issue Nos. 1 and 4 together, which related to the rash and negligent driving by the drivers of vehicles involved in the accident. After discussing the entire material before it in detail, the learned Tribunal came to the conclusion that the accident in question resulting into injuries and consequent death of Vinod Kumar Jindal was caused due to rash and negligent driving of Vikram Tempo No. U.P. 07 H 5878 and accordingly, both the issues were decided against the driver, owner and insurer of the said vehicle. The learned Tribunal took Issue Nos. 2 and 5 relating to holding of valid licence by the drivers of the vehicles involved in the accident. It came to the conclusion that the driver of Tempo No. UP 07 J-0091 was holding valid driving licence at the time of accident. Again it came to the conclusion that the other driver was also holding valid driving licence. Accordingly both the issues were decided. The learned Tribunal lastly took Issue No.3 relating to relief. After considering all the

material on record as well as oral evidence of P.W.1, widow of the deceased, the Tribunal held that the claimants are legal heirs of the deceased. As regards age of the deceased, from the High School Certificate, it was clear that the deceased was aged 45 years at the time of accident and the point was determined in favour of the claimants. So far as the income of the deceased is concerned, the learned Tribunal elaborately discussed the oral and documentary evidence on record. It has discussed the income tax returns filed by the claimants. Ultimately, the learned Tribunal came to the conclusion that the monthly income of the deceased can be assessed at Rs. 4,500/- and it was made the basis for working out the compensation. After deducting 1/3rd from this income, it was found that monthly loss comes to Rs. 3000/- and annual loss comes to 12 x 3000= 36,000/-. Then the learned Tribunal applied multiplier of 14 in respect of working out just and proper compensation and has found that the claimants were entitled to get Rs. 5,04,000/-. In addition to it, amount of Rs.10,000/- has been awarded towards funeral expenses and under other heads and the total amount of compensation was rounded up to Rs. 5,20,000/-. Accordingly, the learned Tribunal has allowed the petition for compensation worth Rs. 5,20,000/- along with interest at the rate of 9% per annum from the date of filing of claim petition till the date of payment against the Opposite Party No.3-respondent no.3, the insurer of the offending vehicle. Accordingly, the learned Tribunal has passed the impugned order, as mentioned earlier.

The claimant-appellants have assailed the impugned judgment and award on the ground that proper use of multiplier was not done by the learned Tribunal and that no amount has been awarded towards consortium, etc. and has made a prayer for modifying the compensation amount.

We have heard Mr. Siddharth Sah, learned counsel for the claimant-appellants at length and have carefully perused the

entire material before us including the impugned judgment and award.

Having considered all the aspects of the present case, we are of the view that multiplier of **14** was applied properly so as to find out the just compensation by the Tribunal. The age of the deceased was **45** years as held by the learned Tribunal. It was, however, open to him to apply multiplier of **13** holding that the deceased comes in the age group of 45-50 years, but the learned Tribunal has fairly applied multiplier of **14** to arrive at the correction conclusion and we are of the opinion that the learned Tribunal, while computing the amount of compensation has considered each type of loss thereby rounded up the amount of Rs. 5,14,000/- as Rs. 5,20,000/-. In any view of the matter, no prejudice has been caused to the claimant-appellants in the case under appeal. There is nothing on record to warrant any interference with the impugned order. In the present case, we have no option but to confirm the findings recorded by the learned Tribunal.

Ultimately, the appeal has no force and deserves to be dismissed.

The appeal is dismissed. The findings recorded by the learned Tribunal in the case under appeal are upheld. No order as to costs.

16-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP